

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

BEATRICE HUDSON,)	
)	
Plaintiff,)	8:05CV462
)	
v.)	
)	
CITY OF OMAHA,)	MEMORANDUM AND ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on a "notice to file appeal extension of time, and application to proceed without prepayment of fees and affidavit" (Filing No. 12) filed by the plaintiff, Beatrice Hudson; and plaintiff's motion to proceed in forma pauperis ("IFP") on appeal (Filing No. 13). The plaintiff appeals this Court's Memorandum, Order and Judgment (Filing Nos. 10 and 11) dismissing the above-entitled case, without prejudice, for nonpayment of the Court's filing fee after the Court denied the plaintiff's motion to proceed IFP in the district court.

While the plaintiff may qualify *financially* to proceed IFP, 28 U.S.C. § 1915(a)(3) states that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In *Lee v. Clinton*, 209 F.3d

1025, 1026 (7th Cir. 2000), the Seventh Circuit held that "good faith" for purposes of 28 U.S.C. § 1915 is the "common legal meaning of the term, in which to sue in bad faith means merely to sue on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit." The Court finds that the appeal in this case is not taken in "objective" good faith as defined in *Lee v. Clinton*, 209 F.3d at 1026.

The clerk of the district court will be directed to serve notice of the district court's decision on the parties and the Court of Appeals. See Fed. R. App. P. 24(a)(4). The appellant will have thirty (30) days following service of the Clerk's notice to file a motion in the Court of Appeals for leave to proceed IFP on appeal. Fed. R. App. P. 24(a)(5). Such motion in the Court of Appeals must be accompanied by a copy of the affidavit filed in the district court, or by a new affidavit if none was previously filed, and by a copy of the statement of reasons given by the district court for denial of IFP status on appeal. *Id.* Accordingly.

IT IS ORDERED:

1) That motion to proceed in forma pauperis on appeal (Filing No. 13) is denied, and, unless the Eighth Circuit Court of Appeals rules otherwise, the plaintiff shall pay the \$255 appellate filing fees to the Clerk of the District Court by January 30, 2006, to proceed with this appeal; and

2) That pursuant to Fed. R. App. P. 24(a)(4), the clerk of court shall immediately notify the plaintiff¹ and the Eighth Circuit that the plaintiff has been denied IFP status on appeal, and that this appeal has been determined not to be in good faith.

DATED this 10th day of January, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

¹ The defendant has not yet been served with process.